

AMENDED IN SENATE AUGUST 21, 2012

AMENDED IN SENATE JUNE 28, 2012

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AMENDED IN ASSEMBLY MAY 17, 2012

AMENDED IN ASSEMBLY MAY 1, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 1846**

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**Introduced by Assembly Member Gordon**

February 22, 2012

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An act to add Article 11.1 (commencing with Section 1399.80) to Chapter 2.2 of Division 2 of the Health and Safety Code, and to add Chapter ~~9.8~~ 9.6 (commencing with Section ~~10961~~ 10930) to Part 2 of Division 2 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1846, as amended, Gordon. Consumer operated and oriented plans.

Existing law, the federal Patient Protection and Affordable Care Act (PPACA), requires the Secretary of the United States Department of Health and Human Services to establish the Consumer Operated and Oriented Plan program for the purpose of fostering the creation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets in the states in which they are licensed to offer those plans and makes start-up and solvency loans available for those purposes, as specified. Existing law, the

Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of that act a crime. Existing law also provides for the regulation of various forms of insurance by the Insurance Commissioner and requires insurers to obtain a certificate of authority from the commissioner in order to be admitted to transact insurance business in the state.

This bill would authorize the Director of the Department of Managed Health Care to issue a health care service plan license, and the Insurance Commissioner to issue a certificate of authority, to a consumer operated and oriented plan (CO-OP) established consistent with PPACA, as specified. The bill would specify that a CO-OP issued a license or a certificate of authority is subject to all other provisions of law relating to health care service plans or insurance, respectively, and would further specify that a CO-OP insurer and any solvency loan obtained by the CO-OP pursuant to PPACA are subject to certain requirements imposed on mutual insurers. The bill would authorize the director and the commissioner to request documentation relating to a CO-OP's solvency or start-up loan. The bill would prohibit a CO-OP from converting or selling to a for-profit or nonconsumer-operated entity after receiving a solvency loan, would require a CO-OP to comply with specified governance standards, and would authorize the director to revoke a CO-OP health care service plan's license, and the commissioner to revoke a CO-OP insurer's certificate of authority, for violating those prohibitions. The bill would authorize the ~~departments~~ *Department of Insurance* to enact regulations implementing these provisions *with respect to CO-OP insurers* and would enact other related provisions. Because a willful violation of the bill's requirements by a health care service plan would be a crime, the bill would impose a state-mandated local program.

~~Existing law creates the California Health Benefit Exchange (Exchange) to facilitate the purchase of qualified health plans by qualified individuals and qualified small employers by January 1, 2014. Existing law requires the Exchange to use a competitive process to select carriers to participate in the Exchange.~~

~~This bill would specify that a CO-OP health care service plan or insurer that enters into a contract to offer qualified health plans in the Exchange is subject to the same requirements, terms, and conditions imposed on other carriers participating in the Exchange. The bill would authorize the Exchange to impose terms, conditions, and price on a~~

~~CO-OP health care service plan or insurer if an agreement cannot be reached and would also authorize the Exchange to impose contract sanctions and take any other actions authorized by federal law if a CO-OP health care service plan or insurer fails to comply with any contractual provisions. To the extent permitted under federal law, the bill would authorize the Exchange to limit enrollment in the qualified health plans of a CO-OP health care service plan or insurer offered in the Exchange if the plan or insurer fails to comply with Exchange contract specifications.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) It is the intent of the Legislature in enacting
- 2 this act to ensure all of the following:
- 3 (1) That all insureds and enrollees in a consumer operated and
- 4 oriented plan (CO-OP) be afforded the numerous consumer
- 5 protections available to all other individuals covered by health
- 6 insurance and health care service plans.
- 7 (2) That a CO-OP operated as a health insurer in California be
- 8 subject to all state requirements applicable to health insurers,
- 9 including, but not limited to, the requirements of certificates of
- 10 authority, state reserves, risk-based capital, and financial statements
- 11 filings.
- 12 (3) That a CO-OP operated as a health care service plan in
- 13 California be subject to all state requirements applicable to health
- 14 care service plans, including, but not limited to, licensure
- 15 requirements, operation and renewal requirements, and financial
- 16 responsibility requirements.
- 17 ~~(4) That before a CO-OP may offer a qualified health plan~~
- 18 ~~through the California Health Benefit Exchange, that CO-OP must~~
- 19 ~~adhere to California-specific standards established by the California~~
- 20 ~~Health Benefit Exchange.~~

1     ~~(5) That a CO-OP be subject to the California Health Benefit~~  
2     ~~Exchange's selective contracting requirements, including rate~~  
3     ~~negotiations.~~

4     (b) The Legislature intends and declares that a CO-OP must  
5     comply with the same state and federal standards as other health  
6     insurers or health care service plans.

7     SEC. 2. Article 11.1 (commencing with Section 1399.80) is  
8     added to Chapter 2.2 of Division 2 of the Health and Safety Code,  
9     to read:

10  
11             Article 11.1. Consumer Operated and Oriented Plans  
12

13     1399.80. For purposes of this article, the following definitions  
14     shall apply:

15     (a) "Consumer operated and oriented plan" means a nonprofit  
16     member organization or nonprofit member corporation that has  
17     been established consistent with the requirements of Section 1322  
18     of PPACA and Subpart F (commencing with Section 156.500) of  
19     Part 156 of Subchapter B of Subtitle A of Title 45 of the Code of  
20     Federal Regulations and remains in full compliance with those  
21     requirements. A consumer operated and oriented plan shall also  
22     be known as a "CO-OP."

23     ~~(b) "Exchange" means the California Health Benefit Exchange~~  
24     ~~established under Section 100500 of the Government Code.~~

25     ~~(c)~~

26     (b) "Formation board" means the initial board of directors of a  
27     CO-OP before it has begun accepting enrollment and had an  
28     election by the members of the CO-OP to the board of directors.

29     ~~(d)~~

30     (c) "Member" includes all individuals, including dependents,  
31     18 years of age or older covered under health care service plan  
32     contracts issued by the CO-OP health care service plan.

33     ~~(e)~~

34     (d) "Operational board" means the board of directors elected  
35     by the members of the CO-OP after it has begun accepting  
36     enrollment under its health care service plan contracts.

37     ~~(f)~~

38     (e) "PPACA" means the federal Patient Protection and  
39     Affordable Care Act (Public Law 111-148), as amended by the

1 Health Care and Education Reconciliation Act of 2010 (Public  
2 Law 111-152), and any rules or regulations issued thereunder.

3 ~~(g)~~

4 (f) “Nonprofit member organization” or “nonprofit member  
5 corporation” means a nonprofit public benefit corporation  
6 organized under Part 2 (commencing with Section 5110) of  
7 Division 2 of Title 1 of the Corporations Code, a nonprofit mutual  
8 benefit corporation organized under Part 3 (commencing with  
9 Section 7110) of Division 2 of Title 1 of the Corporations Code,  
10 or a similar entity organized under applicable provisions of the  
11 Corporations Code, or in the case of a foreign corporation, a  
12 nonprofit public benefit corporation, a mutual benefit corporation,  
13 or a similar entity organized under nonprofit laws in a state other  
14 than California.

15 ~~(h)~~

16 (g) “Solvency loan” means a loan provided by the federal  
17 Centers for Medicare and Medicaid Services to a nonprofit member  
18 organization or nonprofit member corporation seeking to become  
19 licensed as a CO-OP health care service plan, to be used to assist  
20 in meeting the state’s fiscal soundness and solvency requirements.

21 ~~(i)~~

22 (h) “Start-up loan” means a loan provided by the federal Centers  
23 for Medicare and Medicaid Services to a nonprofit member  
24 organization or nonprofit member corporation seeking to become  
25 licensed as a CO-OP health care service plan, to be used for  
26 allowed expenses associated with establishing a CO-OP, as further  
27 specified by PPACA.

28 1399.81. The director shall have the authority to issue a license  
29 to act as a health care service plan to a CO-OP that has been  
30 organized as a nonprofit member organization or nonprofit member  
31 corporation under the laws of this state. The director may also  
32 issue a license to act as a health care service plan to a foreign  
33 CO-OP that has been organized as a nonprofit member organization  
34 or nonprofit member corporation under the laws of another state,  
35 provided that the entity meets the requirements governing CO-OPs  
36 under PPACA and this article. A CO-OP seeking or maintaining  
37 a license pursuant to this article shall be subject to the same fees  
38 that are imposed on other health care service plans pursuant to  
39 Article 3 (commencing with Section 1349).

1 1399.83. (a) A domestic or foreign CO-OP licensed as a health  
2 care service plan pursuant to this article shall be subject to all of  
3 the provisions of this chapter and all applicable rules and  
4 regulations of the director, including, but not limited to, the general  
5 provisions governing the issuance of a license in Article 3  
6 (commencing with Section 1349), the operation and renewal  
7 provisions in Article 6 (commencing with Section 1375), and the  
8 financial responsibility requirements in Article 9 (commencing  
9 with Section 1300.75) of Chapter 2 of Division 1 of Title 28 of  
10 the California Code of Regulations. ~~The provisions of this chapter  
11 and the rules and regulations of the director shall be construed in  
12 consideration of the fundamental nature of a CO-OP health care  
13 service plan. In the event of any direct conflict between the other  
14 provisions of this chapter and the provisions of this article, the  
15 provisions of this article shall prevail.~~

16 (b) In compliance with Section 1322(c)(5) of PPACA (42 U.S.C.  
17 Sec. 18042(c)(5)), and any rules or regulations issued under that  
18 section, a domestic or foreign CO-OP licensed as a health care  
19 service plan shall be subject to any state laws that do not prevent  
20 the application of requirements under PPACA.

21 ~~(c) (1) A CO-OP health care service plan that contracts with  
22 the Exchange to offer qualified health plans in the Exchange shall  
23 be subject to the same requirements, terms, and conditions as those  
24 imposed on other carriers participating in the Exchange pursuant  
25 to Title 22 (commencing with Section 100500) of the Government  
26 Code.~~

27 ~~(2) If a CO-OP health care service plan is unable to reach  
28 agreement with the Exchange on terms, conditions, or price, the  
29 Exchange may impose terms, conditions, or price on the CO-OP  
30 health care service plan. If a CO-OP health care service plan fails  
31 to comply with any of the provisions of its contract with the  
32 Exchange, the Exchange may impose contract sanctions, including  
33 monetary penalties, consistent with due process requirements, and  
34 take any other actions permitted under federal law. To the extent  
35 permitted under federal law, the Exchange may limit enrollment  
36 in the qualified health plans offered by a CO-OP health care service  
37 plan through the Exchange if the plan fails to comply with  
38 Exchange contract specifications.~~

39 1399.84. The director may request any documentation relating  
40 to a CO-OP's start-up loan or solvency loan.

1 1399.86. (a) A CO-OP shall be subject at all times to the  
2 prohibitions in PPACA against converting or selling to a for-profit  
3 or nonconsumer-operated entity at any time after receiving a  
4 solvency loan.

5 (b) A CO-OP shall do all of the following, in addition to any  
6 other requirements imposed under Section 156.515 of Title 45 of  
7 the Code of Federal Regulations:

8 (1) Implement policies and procedures to foster and ensure  
9 member control of the organization. For purposes of this paragraph,  
10 a CO-OP shall meet the following requirements:

11 (A) The CO-OP shall have governing documents that incorporate  
12 governing rules that ensure that the directors of the operational  
13 board are elected by a majority vote of a quorum of the CO-OP  
14 members.

15 (B) All members of the CO-OP shall be eligible to vote for each  
16 director on the CO-OP's operational board.

17 (C) Each member of the CO-OP shall have one vote in the  
18 election of each director of the CO-OP's operational board.

19 (D) The first elected directors of the CO-OP's operational board  
20 shall be elected no later than one year after the effective date on  
21 which the CO-OP provides coverage to its first member; the entire  
22 operational board shall be elected no later than two years after the  
23 same date.

24 (E) Elections of the directors on the CO-OP's operational board  
25 shall be contested so that the total number of candidates for vacant  
26 positions on the operational board exceeds the number of vacant  
27 positions, except in cases where a seat is vacated midterm due to  
28 death, resignation, or removal.

29 (F) A ~~two-thirds~~ majority of the voting directors on the  
30 operational board shall be members of the CO-OP.

31 (2) Have an operational board of directors that meets the  
32 following requirements:

33 (A) Each director shall have one vote unless he or she is a  
34 nonvoting director.

35 (B) Positions on the board of directors may be designated for  
36 individuals with specialized expertise, experience, or affiliation  
37 (for example, providers, employers, including small business  
38 consortia, and unions); however, those positions shall not constitute  
39 a majority of the operational board even if the individuals in those  
40 positions are also members of the CO-OP.

1 (C) (i) No representative of any federal, state, or local  
2 government, or of any political subdivision or instrumentality  
3 thereof, and no representative of any organization described in  
4 Section 156.510(b)(1)(i) of Title 45 of the Code of Federal  
5 Regulations may serve as staff of the CO-OP or on the CO-OP's  
6 formation board or operational board.

7 (ii) No board member or staff of the CO-OP shall enter into an  
8 agreement or transaction that would jeopardize member control  
9 as required by Section 156.515 of Title 45 of the Code of Federal  
10 Regulations. A board member or staff of the CO-OP shall only  
11 enter into arm's length transactions as described in Section  
12 156.510(b)(2)(ii) of Title 45 of the Code of Federal Regulations.

13 ~~(D) Each member of the formation or operational board of a~~  
14 ~~CO-OP shall publicly disclose on the Internet Web site of the~~  
15 ~~CO-OP his or her financial interest in any health-related entity in~~  
16 ~~excess of one thousand dollars (\$1,000), including, but not limited~~  
17 ~~to, his or her ownership of stocks or bonds of a health-related entity~~  
18 ~~in excess of one thousand dollars (\$1,000).~~

19 (3) Have governing documents that incorporate ethics, conflict  
20 of interest, and disclosure standards. These standards shall protect  
21 against health care coverage industry involvement and interference.  
22 In addition, these standards shall ensure that each director acts in  
23 the sole interest of the CO-OP, its members, and its local  
24 geographic community, as appropriate, and acts consistently with  
25 the terms of the CO-OP's governance documents and applicable  
26 state and federal law. At a minimum, these standards shall include  
27 the following:

28 (A) A mechanism to identify potential ethical or other conflicts  
29 of interest.

30 (B) A duty on the CO-OP's executive officers and directors to  
31 publicly disclose all potential conflicts of interest pursuant to the  
32 same standards required for state boards or commissions.

33 (C) A process to determine the extent to which a conflict exists.

34 (D) A process to address any conflict of interest.

35 (E) A process to be followed in the event a director or executive  
36 officer of the CO-OP violates the standards described in this  
37 paragraph.

38 ~~(e) A violation of any of the requirements of this section shall~~  
39 ~~constitute grounds for revocation of the license of the CO-OP~~



1 ~~health care service plan, in addition to any other grounds in this~~  
2 ~~chapter for revocation of the license.~~

3 1399.88. In addition to any applicable requirements in this  
4 chapter for maintaining a license, a CO-OP is required at all times  
5 to be in full compliance with the requirements of PPACA  
6 governing CO-OPs. The department may request the federal  
7 government's certification that a CO-OP is in compliance with the  
8 requirements of PPACA governing CO-OPs, as well as the status  
9 of the CO-OP's compliance with its obligations under any loan or  
10 loan modification agreement.

11 ~~1399.89. The department may adopt regulations implementing~~  
12 ~~this article pursuant to the Administrative Procedure Act (Chapter~~  
13 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3 of~~  
14 ~~Title 2 of the Government Code).~~

15 SEC. 3. Chapter ~~9.8~~ 9.6 (commencing with Section ~~10961~~)  
16 ~~10930~~) is added to Part 2 of Division 2 of the Insurance Code, to  
17 read:

18  
19 CHAPTER ~~9.8:~~ 9.6. CONSUMER OPERATED AND ORIENTED PLANS

20  
21 ~~10961.~~

22 10930. For purposes of this chapter, the following definitions  
23 shall apply:

24 (a) "Consumer operated and oriented plan" means a nonprofit  
25 member organization or nonprofit member corporation that has  
26 been established consistent with the requirements of Section 1322  
27 of PPACA and Subpart F (commencing with Section 156.500) of  
28 Part 156 of Subchapter B of Subtitle A of Title 45 of the Code of  
29 Federal Regulations and remains in full compliance with those  
30 requirements. A consumer operated and oriented plan shall also  
31 be known as a "CO-OP."

32 (b) ~~"Exchange" means the California Health Benefit Exchange~~  
33 ~~established under Section 100500 of the Government Code.~~

34 (c)

35 (b) "Formation board" means the initial board of directors of a  
36 CO-OP before it has begun accepting enrollment and had an  
37 election by the members of the CO-OP to the board of directors.

38 (d)

1 (c) “Member” includes all individuals, including dependents,  
2 18 years of age or older covered under health insurance policies  
3 issued by the CO-OP insurer.

4 (e)

5 (d) “Operational board” means the board of directors elected  
6 by the members of the CO-OP after it has begun accepting  
7 enrollment under its health insurance policies.

8 (f)

9 (e) “PPACA” means the federal Patient Protection and  
10 Affordable Care Act (Public Law 111-148), as amended by the  
11 Health Care and Education Reconciliation Act of 2010 (Public  
12 Law 111-152), and any rules or regulations issued thereunder.

13 (g)

14 (f) “Nonprofit member organization” or “nonprofit member  
15 corporation” means a nonprofit public benefit corporation  
16 organized under Part 2 (commencing with Section 5110) of  
17 Division 2 of Title 1 of the Corporations Code, a nonprofit mutual  
18 benefit corporation organized under Part 3 (commencing with  
19 Section 7110) of Division 2 of Title 1 of the Corporations Code,  
20 or a similar entity organized under applicable provisions of the  
21 Corporations Code, or in the case of a foreign corporation, a  
22 nonprofit public benefit corporation, a mutual benefit corporation,  
23 or a similar entity organized under nonprofit laws in a state other  
24 than California.

25 (h)

26 (g) “Solvency loan” means a loan provided by the federal  
27 Centers for Medicare and Medicaid Services to a nonprofit member  
28 organization or nonprofit member corporation seeking to become  
29 licensed as a CO-OP insurer, to be used to assist in meeting the  
30 state’s solvency and reserve requirements.

31 (i)

32 (h) “Start-up loan” means a loan provided by the federal Centers  
33 for Medicare and Medicaid Services to a nonprofit member  
34 organization or nonprofit member corporation seeking to become  
35 licensed as a CO-OP insurer, to be used for allowed expenses  
36 associated with establishing a CO-OP, as further specified by  
37 PPACA.

38 ~~10961.1.~~

39 ~~10930.1.~~ (a) The commissioner shall have the authority to  
40 issue a certificate of authority as a disability insurer to a CO-OP

1 that has been organized as a nonprofit member organization or  
2 nonprofit member corporation under the laws of this state. The  
3 commissioner may also issue a certificate of authority as a  
4 disability insurer to a foreign CO-OP that has been organized as  
5 a nonprofit member organization or nonprofit member corporation  
6 under the laws of another state, provided that the entity meets the  
7 requirements governing CO-OPs under PPACA and this chapter.  
8 A CO-OP seeking or maintaining a certificate of authority pursuant  
9 to this chapter shall be subject to the same fees that are imposed  
10 on mutual insurers.

11 (b) A CO-OP admitted as a CO-OP insurer shall be subject to  
12 the same premium taxes as are imposed on for-profit health insurers  
13 with a certificate of authority from the commissioner.

14 ~~10961.2.~~

15 *10930.2.* A domestic or foreign insurer admitted as a CO-OP  
16 insurer shall be subject to the same “paid-in capital” or “capital  
17 paid-in” requirements as are imposed on domestic and foreign  
18 mutual insurers pursuant to Sections 36 and 4011.

19 ~~10961.3.~~

20 *10930.3.* (a) A domestic or foreign CO-OP admitted as a  
21 CO-OP insurer shall be subject to all of the provisions of this code  
22 that are applicable to insurers issuing policies of health insurance  
23 in the state and all applicable rules and regulations of the  
24 commissioner, including, but not limited to, the general provisions  
25 governing issuance of a certificate of authority in Article 3  
26 (commencing with Section 699) of, the examination provisions in  
27 Article 4 (commencing with Section 729) of, the risk-based capital  
28 requirements in Article 4.1 (commencing with Section 739) of,  
29 and the financial statement filing requirements in Article 10  
30 (commencing with Section 900) of, Chapter 1 of Part 2 of Division  
31 1. ~~The provisions of this code and the rules and regulations of the~~  
32 ~~commissioner shall be construed in consideration of the~~  
33 ~~fundamental nature of a CO-OP insurer. In the event of any direct~~  
34 ~~conflict between the other provisions of this code and the~~  
35 ~~provisions of this chapter, the provisions of this chapter shall~~  
36 ~~prevail.~~

37 (b) In compliance with Section 1322(c)(5) of PPACA (42 U.S.C.  
38 Sec. 18042(c)(5)), and any rules or regulations issued under that  
39 section, a domestic or foreign CO-OP admitted as a CO-OP insurer

1 shall be subject to any state laws that do not prevent the application  
2 of requirements under PPACA.

3 ~~(e) (1) A CO-OP insurer that contracts with the Exchange to~~  
4 ~~offer qualified health plans in the Exchange shall be subject to the~~  
5 ~~same requirements, terms, and conditions as those imposed on~~  
6 ~~other carriers participating in the Exchange pursuant to Title 22~~  
7 ~~(commencing with Section 100500) of the Government Code.~~

8 ~~(2) If a CO-OP insurer is unable to reach agreement with the~~  
9 ~~Exchange on terms, conditions, or price, the Exchange may impose~~  
10 ~~terms, conditions, or price on the CO-OP insurer. If a CO-OP~~  
11 ~~insurer fails to comply with any of the provisions of its contract~~  
12 ~~with the Exchange, the Exchange may impose contract sanctions,~~  
13 ~~including monetary penalties, consistent with due process~~  
14 ~~requirements, and take any other actions permitted under federal~~  
15 ~~law. To the extent permitted under federal law, the Exchange may~~  
16 ~~limit enrollment in the qualified health plans offered by a CO-OP~~  
17 ~~insurer through the Exchange if the insurer fails to comply with~~  
18 ~~Exchange contract specifications.~~

19 ~~10961.4.~~

20 *10930.4.* (a) A solvency loan obtained by a CO-OP shall be  
21 treated as a surplus note and shall be subject to the same  
22 requirements as are imposed on mutual insurers pursuant to Article  
23 4 (commencing with Section 4040) of Chapter 4 of Part 1 of  
24 Division 2. The commissioner may request any documentation  
25 relating to a CO-OP's start-up loan or solvency loan.

26 (b) A CO-OP shall be subject to the same securities permit  
27 requirements as are imposed upon mutual insurers pursuant to  
28 Section 4042; however, the commissioner shall have the authority  
29 to waive the requirements under Section 4042 upon a determination  
30 that they are not applicable following a full review of the CO-OP's  
31 plan of operations and any other documents as requested by the  
32 commissioner prior to the admission of the CO-OP.

33 ~~10961.5.~~

34 *10930.5.* The provisions of Section 699.5 shall apply to any  
35 insurer admitted as a CO-OP insurer; however, any loans received  
36 by the CO-OP in the form of a solvency or start-up loan shall not  
37 be construed as any form of subsidy, ownership, or financial control  
38 of the CO-OP insurer within the meaning of Section 699.5.

~~10961.6.~~

10930.6. (a) A CO-OP shall be subject at all times to the prohibitions in PPACA against converting or selling to a for-profit or nonconsumer-operated entity at any time after receiving a solvency loan.

(b) A CO-OP shall do all of the following, in addition to any other requirements imposed under Section 156.515 of Title 45 of the Code of Federal Regulations:

(1) Implement policies and procedures to foster and ensure member control of the organization. For purposes of this paragraph, a CO-OP shall meet the following requirements:

(A) The CO-OP shall have governing documents that incorporate governing rules that ensure that the directors of the operational board are elected by a majority vote of a quorum of the CO-OP members.

(B) All members of the CO-OP shall be eligible to vote for each director on the CO-OP's operational board.

(C) Each member of the CO-OP shall have one vote in the election of each director of the CO-OP's operational board.

(D) The first elected directors of the CO-OP's operational board shall be elected no later than one year after the effective date on which the CO-OP provides coverage to its first member; the entire operational board shall be elected no later than two years after the same date.

(E) Elections of the directors on the CO-OP's operational board shall be contested so that the total number of candidates for vacant positions on the operational board exceeds the number of vacant positions, except in cases where a seat is vacated midterm due to death, resignation, or removal.

(F) A ~~two-thirds~~ majority of the voting directors on the operational board shall be members of the CO-OP.

(2) Have an operational board of directors that meets the following requirements:

(A) Each director shall have one vote unless he or she is a nonvoting director.

(B) Positions on the board of directors may be designated for individuals with specialized expertise, experience, or affiliation (for example, providers, employers, including small business consortia, and unions); however, those positions shall not constitute

1 a majority of the operational board even if the individuals in those  
2 positions are also members of the CO-OP.

3 (C) (i) No representative of any federal, state, or local  
4 government, or of any political subdivision or instrumentality  
5 thereof, and no representative of any organization described in  
6 Section 156.510(b)(1)(i) of Title 45 of the Code of Federal  
7 Regulations may serve as staff of the CO-OP or on the CO-OP's  
8 formation board or operational board.

9 (ii) No board member or staff of the CO-OP shall enter into an  
10 agreement or transaction that would jeopardize member control  
11 as required by Section 156.515 of Title 45 of the Code of Federal  
12 Regulations. A board member or staff of the CO-OP shall only  
13 enter into arm's length transactions as described in Section  
14 156.510(b)(2)(ii) of Title 45 of the Code of Federal Regulations.

15 ~~(D) Each member of the formation or operational board of a~~  
16 ~~CO-OP shall publicly disclose on the Internet Web site of the~~  
17 ~~CO-OP his or her financial interest in any health-related entity in~~  
18 ~~excess of one thousand dollars (\$1,000), including, but not limited~~  
19 ~~to, his or her ownership of stocks or bonds of a health-related entity~~  
20 ~~in excess of one thousand dollars (\$1,000).~~

21 (3) Have governing documents that incorporate ethics, conflict  
22 of interest, and disclosure standards. These standards shall protect  
23 against insurance industry involvement and interference. In  
24 addition, these standards shall ensure that each director acts in the  
25 sole interest of the CO-OP, its members, and its local geographic  
26 community, as appropriate, and acts consistently with the terms  
27 of the CO-OP's governance documents and applicable state and  
28 federal law. At a minimum, these standards shall include the  
29 following:

30 (A) A mechanism to identify potential ethical or other conflicts  
31 of interest.

32 (B) A duty on the CO-OP's executive officers and directors to  
33 publicly disclose all potential conflicts of interest pursuant to the  
34 same standards required for state boards or commissions.

35 (C) A process to determine the extent to which a conflict exists.

36 (D) A process to address any conflict of interest.

37 (E) A process to be followed in the event a director or executive  
38 officer of the CO-OP violates the standards described in this  
39 paragraph.

1 (c) A violation of any of the requirements of this section shall  
2 constitute grounds for revocation of the CO-OP insurer's certificate  
3 of authority, in addition to any other grounds in this code for  
4 revocation of the certificate.

5 ~~10961.7.~~

6 *10930.7.* A CO-OP insurer is insolvent if its surplus becomes  
7 less than the amount of paid-in capital required of a capital stock  
8 company to qualify to transact the class of disability and health  
9 insurance. The conservation and liquidation provisions of Article  
10 14 (commencing with Section 1010) of Chapter 1 of Part 2 of  
11 Division 1 shall apply to CO-OP insurers.

12 ~~10961.8.~~

13 *10930.8.* In addition to any applicable requirements in this  
14 code for maintaining a certificate of authority, a CO-OP is required  
15 at all times to be in full compliance with the requirements of  
16 PPACA governing CO-OPs. The commissioner may request the  
17 federal government's certification that a CO-OP is in compliance  
18 with the requirements of PPACA governing CO-OPs, as well as  
19 the status of the CO-OP's compliance with its obligations under  
20 any loan or loan modification agreement.

21 ~~10961.9.~~

22 *10930.9.* The department may adopt regulations implementing  
23 this chapter pursuant to the Administrative Procedure Act (Chapter  
24 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
25 Title 2 of the Government Code).

26 SEC. 4. No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 the only costs that may be incurred by a local agency or school  
29 district will be incurred because this act creates a new crime or  
30 infraction, eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section 17556 of  
32 the Government Code, or changes the definition of a crime within  
33 the meaning of Section 6 of Article XIII B of the California  
34 Constitution.